

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 18-0192V

Filed: June 17, 2019

UNPUBLISHED

WANDA GARCIA,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Tetanus Diphtheria acellular
Pertussis (Tdap) Vaccine; Abscess;
Non-Specific Mass

John Robert Howie, Howie Law, PC, Dallas, TX, for petitioner.

Julia Marter Collison, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On February 7, 2018, Wanda Garcia (“petitioner”) filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act”). Petitioner alleges that she suffered “an abscess in her left shoulder” which was caused-in-fact by a Tdap vaccination she received on April 22, 2016. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On February 22, 2019, a ruling on entitlement was issued, finding petitioner entitled to compensation. On June 14, 2019, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$54,391.90, consisting

¹ The undersigned intends to post this decision on the United States Court of Federal Claims' website. **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access. Because this unpublished decision contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services).

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

of \$47,500.00 in actual and projected pain and suffering, and \$6,891.90 to satisfy the State of New York Medicaid lien. Proffer at 2-3. In the Proffer, respondent represented that petitioner agrees with the proffered award. *Id.* Based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **the undersigned awards the following:**

- A. a lump sum payment of \$47,500.00, (representing payment for petitioner's actual and projected pain and suffering) in the form of a check payable to petitioner, Wanda Garcia, and**
- B. a lump sum payment of \$6,891.90, representing compensation for satisfaction of the State of New York lien, payable jointly to petitioner, and**

**New York City Human Resources Administration
Division of Liens and Recovery
P.O. Box 414799
Boston, MA 02241-4799**

Petitioner agrees to endorse this payment to the State of New York. These amounts represent compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

WANDA GARCIA,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 18-192V
Chief Special Master Dorsey
ECF

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

I. Compensation for Vaccine Injury-Related Items

On February 22, 2019, respondent filed a Vaccine Rule 4(c) report concluding that petitioner suffered an injury that is compensable under the National Childhood Vaccine Injury Act of 1986, as amended, 42 U.S.C. §§ 300aa-10 to -34. Accordingly, on February 22, 2019, the Chief Special Master issued a Ruling on Entitlement.

Respondent now proffers that, based on the evidence of record, petitioner should be awarded \$54,391.90. This amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

II. Items of Compensation and Form of the Award

The parties recommend that the compensation provided to petitioner should be made through lump sum payments described below, and request that the Chief Special Master’s decision and the Court’s judgment award the following:¹

¹ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future pain and suffering, and future lost wages.

a. Pain and Suffering

Respondent proffers that Wanda Garcia should be awarded \$47,500.00 in actual and projected pain and suffering. This amount reflects that the award for projected pain and suffering has been reduced to net present value. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

b. Medicaid Lien

Respondent proffers that petitioner should be awarded funds to satisfy the State of New York Medicaid lien in the amount of \$6,891.90, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of New York had made to or on behalf of Wanda Garcia from the date of her eligibility for benefits through the date of judgment in this case as a result of her vaccine-related injury suffered on or about April 22, 2016, under Title XIX of the Social Security Act. Reimbursement of the State of New York lien shall be made through a lump sum payment of \$6,891.90, representing compensation for satisfaction of the State of New York lien, payable jointly to petitioner, and

New York City Human Resources Administration
Division of Liens and Recovery
P.O. Box 414799
Boston, MA 02241-4799

Petitioner agrees to endorse this payment to the State of New York.

c. Guardianship

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

III. Summary of Recommended Payments Following Judgment

- | | |
|-----------------------------------|-------------|
| a. Lump sum paid to petitioner | \$47,500.00 |
| b. Reimbursement of Medicaid lien | \$6,891.90 |

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

C. SALVATORE D'ALESSIO
Acting Director
Torts Branch, Civil Division

CATHARINE E. REEVES
Deputy Director
Torts Branch, Civil Division

GABRIELLE M. FIELDING
Assistant Director
Torts Branch, Civil Division

/s/ Julia M. Collison
JULIA M. COLLISON
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Ben Franklin Station
Washington, DC 20044-0146
Tel: (202) 305-0102

Dated: June 14, 2019